

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

DISABLED PATRIOTS OF AMERICA, INC., a  
Florida Non Profit Corporation, and MARCUS  
INGRAM, Individually,

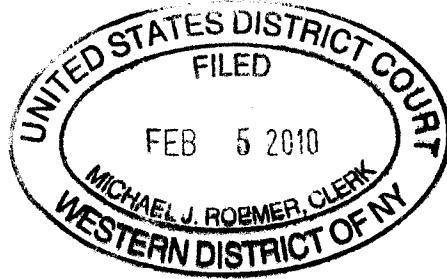
Plaintiffs,

Civil Case No.: 1:07-cv-00299-JTC

v.

NF HOTEL, LLC, a New York Limited Liability  
Company,

Defendant.



**MODIFIED CONSENT DECREE**

This Modified Consent Decree is entered into by and between and, hereinafter sometimes referred to as "plaintiffs," and, hereinafter sometimes referred to as "defendant," on the date last executed below.

**WHEREAS:** The defendant's property is a hotel known as Quality Hotel & Suites at the Falls and is located at 240 Rainbow Boulevard, Niagara Falls, New York 14303. Defendant has represented that there have been delays in making the modifications to the property as provided for pursuant to the original Consent Decree. Accordingly, in consideration for resolving all matters in dispute, the parties have agreed to the following terms and conditions subject to the Court entry of an Order Approving and Entering the Modified Consent Decree.

1. All alterations, modifications, and policies required by this Modified Consent Decree shall be completed by June 21, 2011. After June 21, 2011, to ensure that the modifications to the subject property required below have been completed, defendant shall provide a written report to plaintiffs' counsel to verify commencement, progress and completion of the work required hereby. The parties have agreed that this written report will be prepared by expert, James A. DiLuigi of Access-Ability Consultants, Inc.
2. Defendant shall pay plaintiffs' counsel, Fuller, Fuller & Associates, P.A., for plaintiffs' attorneys' fees, litigation expenses and costs incurred in the modification of the original Consent Decree. Said amount shall be \$9,000.00 and shall be payable by check to Fuller, Fuller & Associates, P.A. by February 4, 2010.
3. When all issues are resolved between the parties, the parties hereby agree and will request the Court to approve and enter the Modified Consent Decree, providing for retention of jurisdiction by the Court to enforce, as necessary, the terms of this Decree.

4. The parties warrant that all the provisions of this Modified Consent Decree will remain in strict confidence, except where disclosure is required under appropriate legal process or is necessary to resolve the issue of attorneys' fees and/or costs. The parties agree to refrain from making any statements about the lawsuit, the allegations contained herein, or this Modified Consent Decree except that the defendant may share this Modified Consent Decree with any prospective purchasers and with any parties engaged to perform the barrier removal obligations herein.
5. This Modified Consent Decree shall be binding upon and inure to the benefit of the parties hereto and their respective successor and/or assigns. The parties shall perform their obligations under this Modified Consent Decree in good faith.
6. The parties agree and acknowledge that the defendant may implement alternative actions that would provide equivalent facilitation to those actions specified in Exhibit A - Settlement Actions, as long as defendant timely informs plaintiffs in writing, through counsel, of the alternative actions being taken.
7. The parties agree that any delays in making the modifications to the property as provided for pursuant to this Modified Consent Decree caused by third parties, including but not limited to construction contractors, or city building officials, inspectors, or permitting departments, will not be deemed to violate the compliance dates herein as long as the defendant makes a good faith effort to effect implementation as soon as reasonably possible thereafter.
8. Upon the Court's approval of this Modified Consent Decree and upon the defendant's full compliance with the terms and conditions of this Modified Consent Decree, plaintiffs hereby release and discharge defendant, its officers, employees, agents, successors and assigns from any and all claims and causes of action related to the property at issue in this action which they have had arising under the Americans With Disabilities Act.
9. The parties acknowledge that the modifications described in this Modified Consent Decree shall be implemented according to the standards set out in 28 CFR Part 36 §36.304(d)(7-1-94 edition). All references to figures in the paragraphs below refer to those that accompany the ADA-SAD.
10. This Modified Consent Decree can be executed in any number of counterparts, each of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. A facsimile copy of any parties signature shall be deemed as legally binding as the original signatures.
11. The defendant is advised that under certain circumstances a tax credit and/or tax deduction may be available to businesses to help cover the cost of making access improvements. (See Sections 44 and 190 of the Internal Revenue Code).

12. Defendant agrees that it shall perform the corrective actions that are identified as part of Exhibit A - Settlement Actions by the completion date set forth in Paragraph 1 of this Modified Consent Decree.

**IN WITNESS WHEREOF**, the parties hereto execute this Modified Consent Decree regarding ADA compliance for Disabled Patriots of America, Inc., a Florida Non Profit Corporation, and Marcus Ingram, Individually vs. NF Hotel, LLC, a New York Limited Liability Company, Case No.: 1:07-cv-00299-JTC to be effective on the date upon which the last signatories execute this Modified Consent Decree.

**PLAINTIFFS:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Disabled Patriots of America, Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Marcus Ingram

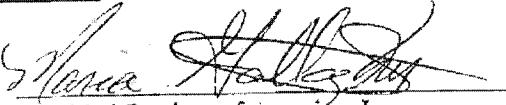
**DEFENDANT:**

By: Joseph M Anderson Date: 1/27/10  
NF Hotel, LLC

12. Defendant agrees that it shall perform the corrective actions that are identified as part of Exhibit A - Settlement Actions by the completion date set forth in Paragraph 1 of this Modified Consent Decree.

IN WITNESS WHEREOF, the parties hereto execute this Modified Consent Decree regarding ADA compliance for Disabled Patriots of America, Inc., a Florida Non Profit Corporation, and Marcus Ingram, Individually vs. NF Hotel, LLC, a New York Limited Liability Company, Case No.: 1:07-cv-00299-JTC to be effective on the date upon which the last signatories execute this Modified Consent Decree.

PLAINTIFFS:

By:   
Disabled Patriots of America, Inc.

Date: Jan 27, 2010

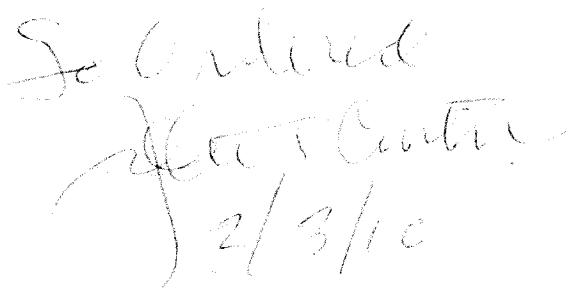
By:   
Marcus Ingram

Date: 2/1/2010

DEFENDANT:

By: NF Hotel, LLC

Date: \_\_\_\_\_

  
Scott G. Anderson  
NF Hotel, LLC  
2/3/10



NF Hotel, LLC

**Exhibit A - Settlement Actions**

Settlement Item	Location	Element	Feature/Finding	Action/Concept	ADA-SAI#
A 1 Tenn Street Parking		Secondary Parking Lot	Lot is remote from an entry, is mostly paved in areas of 1%, and contains 24 parking spaces, none of which are accessible. Two spaces at the Rainbow Boulevard edge of this lot are adjacent to the sidewalk and nearly level.		(ADAAC)
B Rainbow Boulevard Parking		Primary Parking Lot	Lot is adjacent to an entry and contains 30 designated parking spaces, including 3 accessible spaces, all of which are nearly level.	Widen the two spaces at the Rainbow Boulevard edge to create a 2' van accessible space with an access aisle between and a walkway from the sidewalk and nearly level parking spaces do not have access aisles.	4.6
C Rainbow Boulevard Parking		Primary Parking Lot	Parking spaces 20'x20' are low and usually obstructed by parked vehicles.	Relocate the two signs to 50' apart or minimum 10' datum.	4.6.4
D Rainbow Boulevard - Hand Entry		Street Parking	2 accessible parking spaces on the street near the hand entry.	Train viable parking staff to advise guests with disabilities regarding these spaces should be accessible for spaces he will and to offer assistance to parking the car instead.	70.70.1
E Rainbow Boulevard - Hand Entry		Entry Doors	Interior vestibule doors have 10-15 lbs force with 3 seconds closing speed. No threshold.	Adjust door closers to as close as reasonably possible to 3 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11
F Fire Street Hand Entry		Entry Doors	Exterior vestibule doors have 10-15 lbs force with 3 seconds closing speed. Threshold is accessible.	Adjust door closers to as close as reasonably possible to 3 lbs max force with 3 seconds minimum closing speed.	4.13.10
G Fire Street Hand Entry		Entry Doors	Slope down to entry is 7.2% at top & floor adjacent to threshold, next 11 feet slope is 1% to 2 feet deep level landing area which sits about 1 inch.	Modify the entry steps to reduce slope to 1% maximum. Entry could be moved back about 1-2 feet to reduce slope by eliminating the outer portion. Add handrails at each side.	4.3
H Fire Street Hand Entry		OBV/VAK Parking	Outer entrance without door has 2' inch vertical gap offset at threshold. A vertical board was installed.	Eliminate the board and vertical offset. See Settlement Item G.	
I Lobby Hand Large Meeting Room		Entry Doors	2' high x 16' wide doors with push/pull hardware. Closer has 12 lbs force with 1 second closing speed.	Adjust closer to as close as reasonably possible to 3 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11
J Main Restroom w/ Large Lobby Meeting Room		Entry Door	Signage is on the door face and not visible.	Add tactile room name signage and signage indicating the location of the adjacent public accessible restroom. (See Settlement Item L)	4.10
K Women's Restroom w/ Large Lobby Meeting Room		Entry Door	Signage is up the door face and not visible.	Add tactile room name signage and signage indicating the location of the adjacent public accessible restroom. (See Settlement Item L)	4.10
L Restroom Area w/ Large Lobby Meeting Room		Exit Roads	Used for storage.	Change the exit rooms to a unisex restroom and provide an accessible route (from the lobby).	4.1.5(7)(c)
M Lobby/Restaurant Men's Restroom		Entry Door	Signage is on the door face and not visible.	Add tactile room name signage.	4.10
N Lobby/Restaurant Men's Restroom		Entry Door	Signage is on the door face and not visible.	Add ADA signage indicating the location of the accessible men's restroom with a side transfer water closet in the meeting room area. (See Settlement Item L.)	4.1.5(7)(e)
O Lobby/Restaurant Men's Restroom		Entry Door	Closer requires 11 lbs with 3 seconds closing speed.	Adjust closer to as close as reasonably possible to 3 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11
P Lobby/Restaurant Men's Restroom		Lavatory	Knee clearance is not acceptable. Closers top is 3 inches clearance and unlabeled open.	Modify the lavatory to be 14 inches high maximum, with accessible knee clearance and unlabeled open.	4.19
Q Lobby/Restaurant Men's Restroom		Lavatory	Height is 3 inches high to bottom reflecting edge.	Provide a mirror with bottom reflective edge an 40 inches high maximum with a side transfer water closet at the meeting room area. (See Settlement Item L.)	4.19
R Lobby/Restaurant Men's Restrooms		Water Closet (2)	One accessibility type stall, 39-1/2 inches wide.	Add a stall to be outside face of the stall door.	4.17.5
S Lobby/Restaurant Men's Restroom		Alcohol	No visual litter.	At the time of the next MHTS system upgrade, add a visual alarm.	4.1.1 (4)
T Lobby/Restaurant Women's Restroom		Entry Door	Signage is on the door face and not visible.	Add tactile room name signage.	4.10
U Lobby/Restaurant Women's Restroom		Entry Door	Signage is on the door face and not visible.	Add ADA signage indicating the location of an accessible women's restroom with a side transfer water closet at the meeting room area. (See Settlement Item L.)	4.1.5(7)(e)
V Lobby/Restaurant Women's Restroom		Entry Door	Door handle is 45 inches off the floor.	Adjust closer to as close as reasonably possible to 3 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11

Sectional Page	Location	Element	Preferred/Finding	Action/CComments	ADA-SDU (A,D,A,C)
W	Lobby/Restaurant Women's Restroom	Lamppost	3 1/2 inch high top	Modify the lavatory to be 34 inches high maximum, with accessible door clearance and installed paper towel dispensers away from grab bar 12 inches minimum above or 172 inches minimum below.	4.19
X	Lobby/Restaurant Women's Restroom	Lamppost	14 inch high interior	Provide a mirror with bottom edge at 40 inches high maximum	4.19
Y	Lobby/Restaurant Women's Restroom	Water Closet Stalls (7)	1 ambulatory type 31-1/2 inch wide	Relocate dispensers away from grab bar 12 inches minimum above or 172 inches minimum below.	4.26
Z	Lobby/Restaurant Women's Restroom	Water Closet Stalls (7)	1 ambulatory type 31-1/2 inch wide	Add a pull to outside face of the outside pull door	4.17.5
A.A	Cigar Lounge Access from Lobby Elevators	Entry From Elevator Lobby	Signage to note tactile	Add tactile room name signage	4.1.1.(f)(1)
A.B	Restaurant	Farm Street Entry	Walkway from Farm Street side will slope 1%.	Reconstructed the landing to provide a 5 foot deep level area and accessible landing as doors is deteriorated and function it has threshold.	4.13.6
A.C	Restaurant/Bar	Self-Serve Breakfast Buffet Area	Self-service unit is 36 inches wide. Circumference is 12' accessible. Adjacent auxiliary tables for food presentation are 30 inches high.	Install 15% piggyback indicating table service is available on request.	36.30.3
A.D	Religious/BM	Outdoor Patio Off Breakfast Area	Pair of 6 foot doors. Closet 12 1/2 feet set. Slight overhang at doors is deteriorated and function it has threshold.	Add wall-off mat at exterior side to provide a flush transition at the threshold.	4.1.3.6
A.E	Kitchen to Wedding Chapel and Handicap	Handicap	Handrail is on one side only and 2 inches in diameter.	Add a handrail on the other side.	4.26
A.F	Handicap to Wedding Chapel and Handicap	Handicap	Signage is on the door face and not media.	Provide room name media signage at the strike side of the door.	4.30
A.G	Wedding Chapel	Entry	Signage is on the door face and not media.	Provide tactile signage at the strike side of the door.	4.30
A.H	Church Meeting Room	Entry Door	Round knob door hardware.	Change to lever handles.	4.1.9
A.I	Church Meeting Room	Entry Door	62 inch high to top buttons.	Lower to 48 inches to top buttons.	4.2.6
A.J	Church Meeting Room	House Phone	No volume control	Provide a volume control handle.	4.3.1
A.K	Sixty Adjacent to Front Desk for Access to Level 1 Guestrooms	House Phone	No alternate access to this level	Relocate the laundry to be on an accessible route.	4.1.1.(1)
A.L	Church Meeting Room	Handrail	This level is not accessible	4.1.1.(1)	
A.M	Elevators	Braille Floor Indicators at Highway Entrance	Brightly red provided below floor numbers. Some provide room number with Braille before all hand railing entries numbers are visible.	Provide room number with Braille before all hand railing entries.	4.10.3
A.N	Elevators	Emergency Communications	Phone is absent.	Change to audio/visual device. If in a cabinet, provide accessible handle.	4.10.14
A.O	Guestrooms	Accessible Guestrooms	The total has approximately 211 total guestrooms including 12 accessible guestrooms all interior guestrooms and mostly one gate to be accessible as noted below.	The ADA ultimately requires 10 wheelchair accessible guestrooms for a hotel of this size, including 3 with a roll-in shower. Modify the existing accessible guestrooms and mostly one gate to be accessible as noted below.	9.2
A.P	Existing Accessible Guestrooms	Entry Door	Push plate clearance is 6 inches wide.	Install automated door openers with automated latch release and standard height.	1.2.5ig.2.5
A.Q	Existing Accessible Guestrooms	Closet	Stacked washer/dryer	Substitute to provide 172 with a 48 inch high shelf and not below and 172 at standard height.	9.2.1(4)
A.R	Existing Accessible Guestrooms	Baby Chair	Seating height is 59 inches high.	Lower to 48 inches.	4.1.3.9
A.S	Existing Accessible Guestrooms	Bath	Lavatory top is 32 inches high with 26 inch high knee clearance. Pipes are not insulated.	Insulate the pipes.	4.1.19.4
A.T	Existing Accessible Guestrooms	Bath	Hair dryer	Lower to 48 inches high.	ADA/HANDICAP
A.U	Existing Accessible Guestrooms	Bath	Water closet side wall grab bar	Relocate bathtubs to extend to as close as practical to 54 inches from the rear wall.	Fig. 29
A.V	Existing Accessible Guestrooms	Bath	Tub Shower Head	Ability to have a walk-in shower head plus a hand held shower head on a side bar with a different valve control within accessible reach range.	4.21.6
A.W	Existing Accessible Guestrooms	Bath	Tub	Modify one gate to be accessible with 1 bath and a bath with a roll-in shower.	9.1.2
A.Y	Guestroom 400 - 401	Configuration	There are no accessible gates.	4.2	
A.Z	2 Bed Suite				